

(3) InterLATA information services, other than electronic publishing (as defined in section 274(h) of the Communications Act of 1934, as amended, 47 U.S.C. 274(h)) and alarm monitoring services (as defined in section 275(e) of the Communications Act of 1934, as amended, 47 U.S.C. 275(e)).

**§ 64.1905      Structural and Transactional Requirements.**

The separate affiliate required by this section—

- (a) shall operate independently from the Bell operating company;
- (b) shall maintain its own books, records, and accounts which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;
- (c) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;
- (d) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and
- (e) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

**§ 64.1907      Nondiscrimination Safeguards.**

In its dealings with its affiliate described in § 64.1903, a Bell operating company—

- (a) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and
- (b) shall account for all transactions with an affiliate described in § 64.1903 in accordance with § 32.27 of this chapter.

**§ 64.1909      Biennial Audit.**

(a) A company required to operate a separate affiliate under this subpart shall obtain and pay for a joint Federal/ State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section 272 of the Communications Act of 1934, as amended, 47 U.S.C. 272, and this subpart, and the accounting requirements under § 32.27 of this chapter.

(b) The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited

provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

(c) For purposes of conducting audits and reviews under this section—

(1) the independent auditor and the Commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this subpart and that are necessary for the regulation of rates;

(2) the Commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

#### **§ 64.1911 Fulfillment of Certain Requests.**

A Bell operating company and an affiliate that is subject to the requirements of section 251(c) of the Communications Act of 1934, as amended, 47 U.S.C. 251(c)—

(a) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

(b) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in § 64.1903 unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

(c) shall charge the affiliate described in § 64.1903, or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

(d) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

#### **§ 64.1913 Sunset.**

(a) The provisions of this subpart (other than § 64.1911) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d) of the Communications Act of 1934, as amended, 47 U.S.C. 271(d).

(b) The provisions of this subpart (other than § 64.1911) shall cease to apply with respect to the interLATA information services of a Bell operating company on February 8, 2000.

**§ 64.1915      Joint Marketing.**

(a) The term "market or sell" as used in this subpart includes (without limitation) any of the following: advertising the availability of combined local exchange and interLATA services, inbound or outbound joint telemarketing of local exchange and interLATA services, making combined local exchange and interLATA services available from a single source, and/or providing bundling discounts for the purchase of combined local exchange and interLATA services.

(b) A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

(c) A Bell operating company may not market or sell interLATA service provided by an affiliate required by this subpart within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d) of the Communications Act of 1934, as amended, 47 U.S.C. 271(d).

(d) The joint marketing and sale of services permitted under this section shall not be considered to violate the nondiscrimination provisions of § 64.1907.

**§ 64.1917      Transition.**

With respect to any activity in which a Bell operating company is engaged on February 8, 1996, such company shall have until February 8, 1997, to comply with the requirements of this subpart.

# **CC Docket No. 96-149 Ex Parte**

- **Joint Marketing**
- **Centralized Administrative Services**
- **Nondominant Status**

# Intent of Congress in Passing the Telecommunications Act of 1996

*“... to provide for a **pro-competitive, de-regulatory** national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”*

# **To Meet Congress' "Pro-Competitive, De-Regulatory" Goals the Commission Should Permit:**

- **Pacific Bell and PBCOM to offer "one-stop shopping" and integrated packaging**
- **Pacific Telesis or its services subsidiary to provide centralized administrative services to all of its affiliates**

# Joint Marketing — Section 272(g)(1)&(2)

- The Act permits PBCOM to market intraLATA and interLATA services
- The Act permits Pacific Bell to serve as a sales channel for its interLATA affiliate, PBCOM
- Pacific Bell and PBCOM can offer “one-stop shopping” and integrated packaging
- PBCOM will fairly compensate Pacific Bell for all joint marketing efforts

# PBCOM Plans

- **Sales**
  - Pacific Bell/Nevada Bell joint marketing will be an important channel for PBCOM
  - PBCOM will also have its own sales channels and will utilize third party retail channels
- **Services Provisioning: IntraLATA**
  - PBCOM's state filings for authority in California and Nevada include requests for CLEC authority. The extent to which PBCOM will utilize that authority will depend importantly on Pacific Bell's and Nevada Bell's ability to market and sell "integrated packages" to meet the competition from major IECs
- **Services Provisioning: InterLATA**
  - PBCOM currently plans to provide interLATA services through a combination of the use of its own facilities (e.g., switches) and third party facilities of other carriers. We expect to use Sprint for nationwide and international carriage. In-region, we will consider options, including Sprint and Pacific Bell facilities pursuant to section 272(e)(4).



# **Pacific Bell Will Serve As a Sales Channel for Its InterLATA Affiliate, PBCOM**

- Includes all marketing and sales-related activities
- Pacific Bell will comply with all CPNI requirements in marketing PBCOM's services
- Marketing and sales include, for example:
  - advertising
  - outbound calling to customers
  - offering both types of services on the same call
  - integrating packages of services
  - customer referrals and transfers

# Pacific Bell's Joint Marketing Should Be Broadly Interpreted

- In order to provide best service to customers Pacific Bell must be able to do everything competitors can do to market and sell PBCOM's and Pacific Bell's services together
- Pacific Bell should be able to sell *all* services offered by PBCOM

# Pacific Bell and PBCOM Can Offer One-Stop Shopping and Integrated Packaging

- This is essential to compete with other IECs that offer bundled services
- Promotes competition — as the Act intends
- Minimizes customer confusion from multiple contacts
- Increases economic efficiency — permits economies of scope

# Pacific Bell Looks Forward to Joint Marketing PBCOM's Services with Pacific Bell's Services

- Value to Pacific Bell's customers
  - “One-stop shopping”
  - Responsive to customer requests
  - Less confusing for customers
- Value to Pacific Bell
  - Promotes customer satisfaction
  - Retains customers on Pacific Bell's services
  - Allows Pacific Bell to compete effectively

# **PBCOM Will Fairly Compensate Pacific Bell for All Joint Marketing Efforts**

- **Terms of compensation will be consistent with federal and state affiliate transaction rules**
  - **Must be publicly filed and will be closely scrutinized by interested parties**
- **Subject to various audits — Commission(s), company auditors, and external auditors**
- **Requirement to maintain separate books will enable detection of inequities**

# Provision of Administrative Services by the Holding Company

- Consolidation of administrative services can benefit consumers
- Section 272(b) does not apply to the holding company
- The provisions of the 1996 Act are sufficient to preclude cross-subsidy and discrimination

# Consolidation of Administrative Services Can Benefit Consumers

The holding company or a services subsidiary can perform certain functions for all of its subsidiaries, including the BOC and a section 272 separate affiliate

- Finance and Accounting
- Legal Services
- Human Resources
- Marketing Communications
- Research and Development
- New Product Development
- Certain Procurement
- Management Information and Marketing Support Systems
- Real Estate Management
- Business Placement

***By consolidating administrative services the corporation can realize economies of scope and scale and benefit consumers***

# Section 272(b) Does Not Apply to the Holding Company

- The four structural separation provisions of section 272(b) expressly relate only to the relationship between the separate affiliate (PBCOM) and the BOC
- If Congress had intended to separate the Holding Company, it would have been specific
- The central provision of administrative services is essential to efficient operations
- PBCOM's competitors, such as AT&T and MCI are permitted to provide centralized administrative services
- Under *Computer Inquiry II*, the BOC was permitted to provide certain "administrative services" to the separate affiliate



# **The Provisions of the 1996 Act Are Sufficient To Preclude Cross-Subsidy and Discrimination**

- **Pacific Bell's books, records, and accounts are separate from PBCOM's**
- **Pacific Bell and PBCOM will have separate personnel**
  - **Obtaining services from the same company does not create shared employees**
- **Pacific Bell's assets will not guarantee PBCOM's credit**
  - **Any holding company guarantee of the affiliate's debt must be without recourse to the BOC's assets**
- **Transactions between Pacific Bell and PBCOM must be at arm's length and will be subject to the Commission's affiliate transactions accounting rules**

# PBCOM Should Be Regulated As a Nondominant Carrier

- PBCOM will have zero initial market share and no market power
- Substitutable supply capacity exists -- customers can easily change providers if PBCOM's prices are not competitive
- Dominant regulation will harm competition
- The U.S. Department of Justice recommends: *"The Commission should not apply its dominant carrier regulations to BOC affiliates."*

# SUMMARY

- Pacific Bell and PBCOM can offer “one-stop shopping” and integrated packages
- Pacific Telesis or a services subsidiary can provide administrative services to PBCOM
- PBCOM should be regulated as a nondominant carrier